House of Representatives

General Assembly

File No. 164

January Session, 2013

House Bill No. 5484

House of Representatives, March 26, 2013

The Committee on General Law reported through REP. BARAM of the 15th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING HEALTH INSURANCE COVERAGE AND ABUSE-DETERRENT PRESCRIPTION MEDICATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 38a-492i of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2014*):

(a) Each individual health insurance policy providing coverage of the type specified in subdivisions (1), (2), (4), (10), (11) and (12) of section 38a-469 delivered, issued for delivery, renewed, amended or continued in this state shall provide access to a pain management specialist and coverage for pain treatment ordered by such specialist that may include all means medically necessary to make a diagnosis and develop a treatment plan including the use of necessary medications and procedures.

(b) (1) No such policy that provides coverage for prescription drugs shall require an insured to use, prior to using a brand name prescription drug prescribed by a licensed physician for pain

treatment, any alternative brand name prescription drugs or over-the-counter drugs.

(2) Such policy may require an insured to use, prior to using a brand name prescription drug prescribed by a licensed physician for pain treatment, a therapeutically equivalent generic drug, unless: (A) The brand name prescription drug contains United States Food and Drug Administration approved abuse-deterrent labeling, and (B) the therapeutically equivalent generic drug does not contain such labeling.

(c) As used in this section, "pain" means a sensation in which a person experiences severe discomfort, distress or suffering due to provocation of sensory nerves, and "pain management specialist" means a physician who is credentialed by the American Academy of Pain Management or who is a board-certified anesthesiologist, physiatrist, neurologist, oncologist or radiation oncologist with additional training in pain management.

Sec. 2. Section 38a-518i of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2014*):

(a) Each group health insurance policy providing coverage of the type specified in subdivisions (1), (2), (4), (10), (11) and (12) of section 38a-469 delivered, issued for delivery, renewed, amended or continued in this state shall provide access to a pain management specialist and coverage for pain treatment ordered by such specialist that may include all means medically necessary to make a diagnosis and develop a treatment plan including the use of necessary medications and procedures.

(b) (1) No such policy that provides coverage for prescription drugs shall require an insured to use, prior to using a brand name prescription drug prescribed by a licensed physician for pain treatment, any alternative brand name prescription drugs or over-the-counter drugs.

(2) Such policy may require an insured to use, prior to using a brand

name prescription drug prescribed by a licensed physician for pain treatment, a therapeutically equivalent generic drug, unless: (A) The brand name prescription drug contains United States Food and Drug Administration approved abuse-deterrent labeling, and (B) the therapeutically equivalent generic drug does not contain such labeling.

(c) As used in this section, "pain" means a sensation in which a person experiences severe discomfort, distress or suffering due to provocation of sensory nerves, and "pain management specialist" means a physician who is credentialed by the American Academy of Pain Management or who is a board-certified anesthesiologist, physiatrist, neurologist, oncologist or radiation oncologist with additional training in pain management.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*January 1, 2014*	38a-492i
Sec. 2	*January 1, 2014*	38a-518i

GL *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 14 $	FY 15 $
State Comptroller - Fringe Benefits	GF, TF- Cost	On Average: $219/Per Prescription	On Average: $219/Per Prescription
The State	Indeterminate	Indeterminate	Indeterminate

Municipal Impact:

Municipalities	Effect	FY 14 $	FY 15 $
Various Municipalities	STATE MANDATE - Cost	Potential	Potential

Explanation

The bill will result in a cost to the state employee and retiree health plan ("the state plan").[1] The annual cost will depend on two factors: 1) the cost differential between abuse deterrent brand name drugs prescribed for pain management and their generic substitution, and 2) the number of prescriptions prescribed in a given year governed by this mandate. In accordance with the 2009 agreement between the State and the State Employees Bargaining Agent Coalition (SEBAC), the state plan currently requires generic substitution. In FY 11 the state plan's gross prescription expenditures for all prescriptions was approximately $414.8 million (or 40.8% of total FY 11 state plan health expenditures). Generic prescriptions accounted for approximately 18.9% of total prescription expenditures but 62% of the total

[1] The state employee and retiree health plan is currently self-insured. Pursuant to federal law, self-insured health plans are exempt from state health mandates. However, the state has traditionally adopted all state health mandates.

prescriptions filled. In FY 11 the difference between the average cost per generic prescription and preferred brand prescription was approximately $219. The total number of prescriptions impacted by this bill is currently unknown.

Municipal Impact

The bill will increase costs to certain fully insured, municipal plans which require generic substitution for prescriptions used to manage pain. The coverage requirements may result in increased premium costs when municipalities enter into new health insurance contracts after January 1, 2014. In addition, many municipal health plans are recognized as "grandfathered" health plans under the Patient Protection and Affordable Care Act (PPACA).[2] It is unclear what effect the adoption of certain health mandates will have on the grandfathered status of certain municipal plans under PPACA.[3] Pursuant to federal law, self-insured health plans are exempt from state health mandates.

The State and PPACA

Lastly, PPACA requires that, effective January 1, 2014; all states must establish a health benefit exchange, which will offer qualified health plans that must include a federally defined essential health benefits package (EHB). The federal government is allowing states to choose a benchmark plan to serve as the EHB until 2016 when the federal government is anticipated to revisit the EHB.

While states are allowed to mandate benefits in excess of the EHB, the federal law requires the state to defray the cost of any such additional mandated benefits for all plans sold in the exchange. The

[2] Grandfathered plans include most group insurance plans and some individual health plans created or purchased on or before March 23, 2010.

[3] According to the PPACA, compared to the plans' policies as of March 23, 2010, grandfathered plans who make any of the following changes within a certain margin may lose their grandfathered status: 1) Significantly cut or reduce benefits, 2) Raise co-insurance charges, 3) Significantly raise co-payment charges, 4) Significantly raise deductibles, 5) Significantly lower employer contributions, and 5) Add or tighten annual limits on what insurer pays. (www.healthcare.gov)

extent of these costs will ultimately depend on the mandates included in the federal essential benefit package, which have not yet been determined. State mandated benefits enacted after December 31, 2011 cannot be considered part of the EHB for 2014-2015 unless they are already part of the benchmark plan.[4] However, neither the agency nor the mechanism for the state to pay these costs has been established.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

[4] *Source*: Dept. of Health and Human Services. *Frequently Asked Questions on Essential Health Benefits Bulletin* (February 21, 2012).

OLR Bill Analysis

HB 5484

AN ACT CONCERNING HEALTH INSURANCE COVERAGE AND ABUSE-DETERRENT PRESCRIPTION MEDICATIONS.

SUMMARY:

This bill bars individual and group health insurance policies from requiring the use of a generic drug prescribed for pain management that is not drug abuse-deterrent when there is a therapeutically equivalent brand name available that is abuse-deterrent. Currently, these policies can require that therapeutically equivalent generic drugs be substituted for brand name pain management drugs.

Abuse-deterrent prescription drugs (1) are specially formulated to deter users from using the drug in an altered form or in an unintended way and (2) contain U.S. Food and Drug Administration approved abuse-deterrent labeling.

The bill applies to health insurance policies, whether individual or group, that provide

1. basic hospital expense coverage,
2. basic medical-surgical expense coverage,
3. major medical expense coverage,
4. limited benefit health coverage,
5. hospital or medical service plan contract, or
6. hospital and medical coverage provided to subscribers of a health care center in the state.

Such policies are required to cover access to, and necessary

treatment by, a pain management specialist, including coverage for prescription drugs.

Due to the federal Employee Retirement Income Security Act (ERISA), state insurance benefit mandates do not apply to self-insured benefit plans.

EFFECTIVE DATE: January 1, 2014

BACKGROUND

Abuse-Deterrent Pain Management Drugs and Labeling

To some extent, pain management drugs can be made abuse-deterrent by combining the active drug, generally opioids, with another substance that counteracts or alters the active drug if its form is changed. The U.S. Food and Drug Administration (FDA) has characterized six properties which when present in a drug make that drug abuse-deterrent.

The FDA regulates prescription drug labeling, in concurrence with states, and requires that information on a drug's label be approved before the drug is marketed. Similarly, the FDA must approve of a drug being labeled as abuse-deterrent before that drug can be marketed as an abuse-deterrent drug. In January 2012, the FDA issued draft, non-binding guidance on how abuse-deterrent drugs should be labeled, and recommended that such labeling characterize the drugs abuse-deterrent properties and include the results of studies in those properties. The FDA further indicated that it has adopted a flexible, adaptive approach to approving abuse-deterrent labeling in order to facilitate the introduction of these drugs into the market and to appropriately react to the rapid scientific and technologic advancements underlying the development of these drugs.

Related Federal Law

The Affordable Care Act (P.L. 111-148) allows a state to require health plans sold through its exchange to offer benefits beyond those already included in its "essential health benefits," but the act requires the state to defray the cost of these additional benefits. The

requirement applies to mandates enacted after December 31, 2011. As a result, the state would be required to pay the insurance carrier or enrollee to defray the cost of any new benefits mandated after this date.

COMMITTEE ACTION

General Law Committee

Joint Favorable
Yea 16 Nay 2 (03/12/2013)